IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 905 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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SUPERINTENDENT OF POST OFFICES - Applicant(s)
Versus
THAKORE DIWANJI HAJOORJI & 1 – Respondent(s)

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Appearance :
MR SHAKEEL A QURESHI for the Applicant.
MR PRATIK B BAROT for Respondent no.1.
Ms. Nandini Joshi, Addl.PUBLIC PROSECUTOR for Respondent no.2.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 08/08/2006

ORAL JUDGMENT

The present Revision Application has been preferred against the judgment and order dated 2nd April, 2005 in Criminal Appeal No. 44 of 2003 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Mahesana, whereby, the judgment and order dated 10th November, 2003 in Chief case no. 92 of 1999 passed by the learned Chief Judicial Magistrate, Mahesana has been quashed and set aside

and the respondent no.1-accused has been given benefit of doubt. By the aforesaid order of the learned Chief Judicial Magistrate, Mahesana, the respondent no.1-accused was convicted and sentenced to undergo simple imprisonment of one year and pay a fine of Rs. 5000/-,in default, simple imprisonment of three months for the offences punishable under sections 409 and and simple imprisonment of one year and pay a fine of Rs.2000/-, in case of default, one month's simple imprisonment for the offence punishable under section 477-A of the Indian Penal Code. This sentence awarded by the trial court has been upset by the lower appellate court and hence the present Revision Application has been preferred by the original complainant.

2. Brief facts leading to the present Revision Application are that the respondent no.1-accused was serving as post-master in the Post office at Siddhpur sub- divisional office, Mahesana division. Superior officer of respondent no.1-accused visited the post office, namely Satlasana post office on 15th February, 1996 at 9.30 a.m. As per rules, cash as well as

stamps were calculated and there was a deficit of Rs. 89,649.15 ps. In fact, as per the records, Satlasana post office ought to have cash of Rs. 1,52,953.81 ps., whereas there was a cash of only Rs. 63,201.66 ps. Thus, there was a deficit of Rs. 89,694.15 ps. which could not be explained by the respondent no.1-accused. Subsequently, he deposited the said amount with the applicant. It has also been pointed out by the respondent no.1-accused that the said amount was utilised by him for certain land transactions. Exhs. 7 and 8 reveal this fact. It is also on the record that the respondent no.1-accused has admitted this fact in his statement under section 313 of the Criminal Procedure Code that exh. 8 has been written by him. Thus, exhs. 7 and 8 read with exh. 9 clear reveal that there was a deficit of a sizeable amount. Similarly exhs. 10 and 11 are also written by respondent no.1-accused and therefore, on the basis of this evidence and other evidence of prosecution witnesses, the learned Chief Judicial Magistrate, Mahesana convicted and respondent no.1-accused vide his judgment and order dated 10th November, 2003 for the offences punishable under sections 409 and 477-A

of the Indian Penal Code and sentenced the respondent no.1-accused to undergo simple imprisonment for one year and pay a fine of Rs.5000/-, in default further simple imprisonment of three months for the offence punishable under section 409 of the Indian Penal Code and also sentenced him to undergo simple imprisonment for one year and pay a fine of Rs.2000/-, in default, further simple imprisonment of one year for the offence punishable under section 477-A of the Indian Penal Code. Both the sentences are ordered to run concurrently. Thereafter, an appeal was preferred by respondent no.1-accused, wherein, the learned Additional Sessions Judge and Fast Track Court no. 3, Mahesana gave benefit of doubt to the respondent no.1-accused vide judgment and order dated 2nd April, 2005 and the judgment and order passed by the trial court has been set aside. Against the said judgment of the learned Additional Sessions Judge, Fast Track court no.3, Mahesana the applicant Superintendent of Posts, Mahesana has filed the present Revision Application.

3. I have heard the learned advocate for the

applicant who has mainly submitted that the respondent no.1-accused was in charge of Satlasana post office. When it was visited by the higher officer on 15th February, 1996, a sizeable amount of Rs. 89694.15 ps. was not found in the cash. Upon further inquiry from respondent no.1-accused, the said amount was not only found deficit, but the respondent no.1-accused had also admitted certain facts in his own handwritings and those documents have been placed on record at exhs. 7,8,9,10 and 11. On the basis of these documents exhs. 7 to 11, though it was proved beyond reasonable doubt that the respondent no.1-accused has committed the offence of criminal breach of trust,wrongly benefit of doubt has been given by the lower appellate court. It is also submitted by the learned advocate for the applicant that the present respondent no.1-accused has also been punished in the departmental inquiry and he has been dismissed from service. The Sessions Court has wrongly arrived at a conclusion that exhs. 10 and 11 were not sent to hand writing expert and therefore, benefit of doubt has been given to the accused. In fact, there was no need to send exhs. 10 and 11 to

the hand writing expert looking to the overall evidence led by the prosecution. The respondent no.1-accused has already deposited the amount, but that is not sufficient for exonerating him from the charges levelled against him for the offence punishable under sections 409 and 477-A of the Indian Penal Code. The amount has been utilised for the land transaction. These facts, have clearly come on record vide exhs. 7 and 8. Even in his further statement under section 313 of the Code of Criminal Procedure, the respondent no.1-accused has admitted his signatures in the vital documents. This aspect of the matter has not been appreciated by the Sessions Court and therefore, the order giving benefit of doubt deserves to be quashed and set aside and the matter may be remanded for a fresh decision upon proper evaluation of the evidence on record.

4. I have heard the learned counsel for respondent no.1 who has submitted that the prosecution has failed to prove the offence beyond reasonable doubt against the respondent no.1-accused. The evidence which is on record is not sufficient

enough to bring the accusation under sections 409 and 477-A of the Indian Penal Code. Exhs. 10 and 11 have not been proved by the prosecution and as they were wrongly relied upon by the trial court, the learned Additional Sessions Judge has therefore, rightly given benefit of doubt to the respondent no.1 accused. No error has been committed by the lower appellate court and therefore, the order may not be interfered with by this Court.

5. I have also heard the learned Additional Public Prosecutor who has also submitted that the learned Additional Sessions Judge has not given any reasoning whatsoever for upsetting the judgment and order of the trial court. In fact, no two findings are possible looking to the evidence on record. Looking to the evidence on record, and especially exhs 7 to 11, the offence against respondent no.1 is proved beyond reasonable doubt. This aspect of the matter has not been appreciated by the learned Additional Sessions Judge, Mahesana and therefore, the judgment and order passed by the learned Additional Sessions Judge, Mahesana deserves to be

quashed and set aside and the matter may be remanded for a fresh decision.

6. Having heard the learned counsel for both the sides and looking to the evidence on record, in my opinion, the judgment and order dated 2nd April, 2005 in Session case no. 44 of 2003 passed by the learned Additional Sessions Judge, Mahesana requires to be quashed and set aside and the matter requires to be remanded for its fresh decision after hearing the parties for the following facts and reasons:

(i) The learned Additional Sessions Judge, Mahesana while passing the impugned order, whereby benefit of doubt has been given to the respondent no.1-accused has not properly appreciated the fact that it is the respondent no.1 accused who could not correctly account for the amount of Rs. 89694.15 ps, when Satlasana post office was visited by the complainant viz. Yashwantrai Modi, Sub-divisional Inspector, Postal, Siddhpur division, on 15th February, 1996. The aforesaid amount, upon inquiry was deposited by the respondent no.1-accused with

the applicant and looking to exhs. 7 to 11, the respondent no.1-accused has admitted certain facts. Signature and hand-writing in those documents have been accepted by the accused in his statement under section 313 of Criminal Procedure Code, 1973. Looking to the evidence on record at exhs. 10 and 11, which are dated 15th February, 1996 and 16th February, 1996 respectively, have been admittedly signed by respondent no.1- accused. The signatures on these documents have been admitted by the respondent no.1-accused. Looking to exh. 13 also, there is evidence against the respondent no.1-accused. Looking to the statement of the respondent no.1-accused under section 313 of the Code of Criminal Procedure, there is enough material against the respondent no.1-accused. Looking to the overall evidence on record, right from exhs. 7 to 9,10,11 and 13 and the depositions of PW 1 and PW 5 at exhs. 5 and 15 respectively, the conclusions arrived at by the learned Additional Sessions Judge, Mahesana, 3rd Fast Track Court, Mahesana of giving benefit of

doubt is not true and correct. From the overall evidence on record, exhs. 10 and 11 ought to have been appreciated by the learned Additional Sessions Judge, Mahesana. The learned Additional Sessions Judge, without considering other evidence on record, has brushed aside the documents at exhs. 10 and 11. These two pieces of evidence ought to have been evaluated keeping in mind the overall evidence of the prosecution witnesses. As this Court is remanding the matter for its fresh decision, it is not giving a graphic sketch, how and by which exhibit no.-document, allegations levelled against the accused are proved. This question is left open for the trial court to decide afresh.

7. In view of the above facts and reasons, the judgment and order dated 2nd April, 2005 in Criminal Appeal no.44 of 2003 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Mahesana is hereby quashed and set aside. The matter is remanded to the lower appellate court with a direction that the appeal shall be heard and decided afresh, after

giving an opportunity of being heard to the applicant as well as to respondent no.1-accused. Rule made absolute accordingly.

(D.N.Patel,J)

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